IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 16379 of 2007
Date of decision 6. 12 .2007

Anmol Bakers Pvt. Ltd. .. petitioner

Versus

State of Punjab and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

PRESENT: Mr. K.L.Goyal, Advocate for the petitioner
Mr. Amol Rattan Singh, Addl. AG Pb.

M.M.Kumar, J.

In this petition filed under Article 226 of the Constitution the prayer made by the petitioner is for quashing order dated 30.8.2006 (Annexure P.24) passed by the Excise and Taxation Officer-cum Designated Officer ( respondent No.2) and order dated 7.9.2007 ( Annexure P.34) passed by the Punjab Vat Tribunal (for brevity 'the Tribunal'). In the alternative a further prayer has also been made for quashing order dated 24.11.2006 ( Annexure P.28) passed by the ETO-cum Designated Officer ( respondent no.2) dismissing the application moved by the petitioner for rectification of the order dated 30.8.2006 ( Annexure P.24). Still further a prayer for quashing order dated 7.9.2007 ( Annexure P.37) passed by the Tribunal has also been made. Further challenge has also been made to various other orders.

The petitioner was subjected to assessment and vide assessment order dated 30.8.2006 ( Annexure P.24) passed by the ETO-cum Designated Officer, Patiala. A total demand of Rs.60760078/- has been raised. The afore-mentioned order was challenged before the Deputy Excise and

Taxation Commissioner ( Appeals) under Section 62 of the Punjab Value Added Tax Act, 2005 ( for brevity 'the Act'). On the appeal an order dated 19.2.2007 ( Annexure P.35) has been passed directing the petitioner to comply with the mandatory provisions of Section 62(5) of the Act which requires that an appeal is not to be entertained unless such an appeal is accompanied by satisfactory proof of prior payment of 25% of the amount of tax, penalty and interest. The petitioner was granted time to produce the treasury receipt upto 12.3.2007 failing which the appeal was to be dismissed in limine. Accordingly, the appeal was dismissed on 13.3.2007 ( Annexure P.36) as the petitioner has failed to deposit 25 percent of the amount. The afore-mentioned order was challenged before the Tribunal. The Tribunal vide its order dated 7.9.2007 dismissed the appeal and upheld the order dated 13.3.2007.

We have heard the learned counsel for the parties at a considerable length. At this stage it is not possible for us to record a finding whether there is any mistake in framing the assessment by the Excise and Taxation Officer cum Designated Officer, Patiala. The Assessing Officer has framed the assessment and has computed the following items:

| | |
|---|---|
| " Wrong ITC claim availed | 20166608/- |
| Penalty u/s 56 | 40333216/- |
| Penalty u/s 60 | 5000/- |
| (for non production of books of account) | |
| interest | 245254/- |
| Total | 60760078/- |

Accordingly no view is being expressed with regard to the correctness of the amount of wrong ITC claim availed by the petitioner. However, keeping in view the various aspects and in the interest of justice, we deem it just and appropriate to exercise discretion by directing the respondent

Deputy Excise and Taxation Commissioner ( Appeals) Patiala Division, Patiala to accept the pre-deposit amount of Rs. One crore. The afore-mentioned amount shall be considered sufficient compliance of the requirement of Section 62(5) of the Act.

In view of the above, the writ petition is disposed of with a direction to the Deputy Excise and Taxation Commissioner ( Appeals), Patiala Division, Patiala (respondent no.3) to accept the amount of rupees one crore as a pre-deposit instead of insisting upon deposit 25 percent of the total amount assessed vide order dated 30.8.2006 ( Annexure P.24). The petitioner shall deposit the afore-mentioned amount on or before 7.1.2008 and then respondent no.3 shall decide the matter on merits without being influenced by the observations made by any authority in any of the orders. If the amount is deposited on or before 7.1.2008 then the order dated 19.2.2007 ( Annexure P. 36) passed by respondent no.3 and further order dated 7.9.2007 passed by the Tribunal would stand quashed. The appeal filed by the petitioner shall then be heard on merits in accordance with law. However, it is made clear that if the amount is not deposited on or before 7.1.2008 then those orders would continue to operate and the writ petition shall be deemed to be dismissed without any further reference to the Bench.

**(M.M.Kumar)**
**Judge**

**(Rakesh Kumar Jain)**
**Judge**

**6.12.2007**
**okg**